



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
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San Francisco, CA 94105

SFUND RECORDS CTR  
**2258343**

July 13, 2007

Mr. Edward Modiano  
OPOG Project Coordinator  
De Maximis, Inc.  
1322 Scott Street, Suite 101  
San Diego, CA 92106

RE: OPOG's Schedule Extension Request for Non-Time-Critical Removal Action  
Omega Chemical Superfund Site, Whittier, California

Dear Mr. Modiano:

I am writing in response to your July 2, 2007 letter, on behalf of the Omega Chemical Site PRP Organized Group (OPOG), which provides a description of OPOG's interaction with various permitting agencies and property owners in the context of the subject schedule, and requests an extension to achieve system startup. The letter also requests a "Branch Chief level meeting" to "flesh out this request and to keep the lines of communication open..."

As indicated in my May 29, 2007 letter to you, this is the third time that OPOG has requested an extension to an approved schedule for construction of the groundwater treatment system. The first request (9/8/06), which added approximately eight months to the original schedule, was submitted only 22 days before completion of construction was required, and only after repeated urging from EPA. The next request (1/19/07) added approximately two months to the schedule, and indicated that most of the delay was due to the "Sewer Area Study" required by the L.A. County Department of Public Works, which is now complete. The latest request would add approximately five months to the schedule and identifies various sources of the additional delay, none of which OPOG considers within its control.

Please be advised that the information provided in your letter is not sufficient for EPA to approve another amendment to the schedule. In that regard, EPA offers the following comments regarding the sources of delay you cite in the letter.

City of Whittier: The letter states that Line 96 in the approved schedule (Submit Treatment Plant and Whittier Pipeline Design to Whittier and EPA) is not a "critical

pathway" item. EPA considers each line item in the schedule to be enforceable under the Partial Consent Decree (Partial CD) regardless of whether OPOG considers it to be a critical pathway item. The Partial CD does not distinguish the various schedule items based on this label; rather, it plainly requires performance of work "in accordance with" the approved schedule. Partial CD, Para. 7. EPA has not imposed stipulated penalties for OPOG's failure to meet that, and other deadlines that have been missed because we were led to believe that the system startup date of August 3, 2007 would still be met. OPOG assured EPA as recently as April 25, 2007 that the startup deadline would be met.

The letter also states that the City of Whittier (Whittier) was not informed of the proposed non-time-critical removal action. Although that has no bearing on OPOG's responsibility to comply with the schedule (and, if anything, suggests that OPOG failed to inform Whittier of its intended actions in a timely manner), EPA did, in fact, inform Whittier of the proposed action in an August 1, 2005 letter (attached). In that letter, and thereafter in a telephone call with Whittier's Director of Public Works, EPA offered to meet with the City Council to discuss the proposed action. The offer was not accepted.

Your letter refers to EPA's Action Memorandum, dated 9/27/05, which states that Whittier would not have an active role in the construction or operation and maintenance of the interim treatment system, and that OPOG's schedule was developed with the impression that Whittier would have "a non-active role in the construction and operation of the treatment system..." Since construction and operation have not begun, it is not clear how that statement impacts OPOG's ability to meet the schedule thus far. The letter also points out that the Action Memorandum does not discuss Whittier's role in reviewing design documents. Routine coordination with Whittier would be expected for any project involving construction within the City, including projects that impact city streets, properties, and rights of way. It is OPOG's responsibility to communicate and work with Whittier to determine the type of requirements that Whittier might seek to impose, and to allow sufficient time to address them. It seems clear that OPOG knew that Whittier would review the design documents, since the approved schedule includes line items for Whittier review and approval.

Furthermore, the 2005 Action Memorandum did not, and was not intended to, answer the question of what type of environmental review of the treatment system Whittier would want to undertake. The fact that Whittier and OPOG (or EPA) may have a difference of opinion over what is "entirely on-site" for permitting purposes, or what is subject to environmental review, does not appear unforeseeable. Notwithstanding any disagreement, however, it seems unrealistic for OPOG to expect that the Action Memorandum, released in September 2005, would definitively resolve this issue of environmental review, when the final configuration for components of the treatment system would not be proposed for several months thereafter.

Sanitation District of Los Angeles County (SDLAC): The letter states "As a result of USEPA's position that the permit exemption in Section 121(f)(1) does not apply to the discharge from the groundwater remediation system, OPOG began discussions with SDLAC on May 26, 2006..." It is not clear why OPOG waited until May 26, 2006 (nearly eight months after the Action Memorandum was signed) to begin discussions with SDLAC. OPOG had ample notice that it would be required to obtain all necessary permits from SDLAC. The September 2005 Action Memorandum clearly states that sewer discharge is considered off-site and that the removal action must be implemented to comply with all substantive and procedural requirements set by the Los Angeles County Sanitation District (page 10, Applicable or relevant and appropriate requirements). Furthermore, Section 7.2.1 of OPOG's Removal Action Plan and Preliminary Design Report (12/16/05) acknowledges that "Discharge to the sewer system requires approval by the CSDLAC" (page 7-2), and that off-site permits are expected to include "Discharge permits for disposal into storm drain or into local sewer system." (page 7-3).

LACDPW: As indicated above, the Action Memorandum and Removal Action Plan/Preliminary Design Report each clearly state the sewer discharge is considered off-site and that permits are required. Therefore, it is not apparent why OPOG waited until August 2006 to begin discussions with LACDPW.

Easement: The letter states that "OPOG initiated evaluation of easement options in 2006" but does not indicate what month that occurred. Surely the easement options were apparent to OPOG at the time it prepared the Engineering Evaluation and Cost Analysis report in 2005. It is also unclear when discussions with private property owners began, but presumably after the evaluation of easement options. It is OPOG's responsibility to obtain any necessary easements and allow sufficient time for that to occur.

Air Permit: Your letter states that OPOG "is in the process of either obtaining a [SMAQMD] permit or complying with the substantive requirements". If OPOG needed clarification regarding SCAQMD permit requirements, it should have requested that clarification long before now. However, operation of the treatment system is considered an on-site activity, therefore complying with SCAQMD substantive requirements is sufficient. If there has not been communication and resolution between OPOG and SQAQMD relating to the permits, it seems to exemplify the type of inaction that appears to have contributed to various delays in project implementation.

Treatment System Construction/Equipment: The letter characterizes the date of mobilization and delivery of the treatment system equipment as not time-critical. Again, all schedule items are enforceable. The letter indicates that "OPOG will not be in a position to have equipment associated with the fabrication of the treatment system facility and conveyance pipeline delivered until the necessary easements and permits are

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obtained from the local authorities and land owners." Since it appears that the delays in obtaining permits and easements could have been avoided, an extension to the schedule for delivering equipment or constructing the treatment system would not be appropriate.

In summary, it is not evident that any of the delays described in the 7/2/07 letter were "beyond the control of OPOG". However, EPA has granted OPOG an opportunity to meet with the Chief of the Site Cleanup Branch, Elizabeth Adams. In the meantime, if you have any questions regarding this matter please call me at (415) 972-3149.

Sincerely,

Chris Lichens  
Superfund Project Manager

cc: Fred Schauffler, EPA  
Steve Berninger, EPA  
Karl Fingerhood, DOJ  
Lori Parnass, California EPA (DTSC)  
Dave Chamberlin, CDM

Attachment